



TOWN OF STONINGTON
Zoning Board of Appeals
Stonington Police Station Meeting Room
173 South Broad Street
Pawcatuck, Connecticut 06379
MEETING MINUTES
February 9, 2010

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Chairman David Rathbun called the meeting to order at 7:08 P.M. In attendance were members John Prue, Jack Guyol, Fred Deichmann, Lynn Conway, Neil Canavan and David Rezendes. Zoning Official Joseph Larkin and Town Attorney Jeffrey Londregan were also present.

Public Hearing Continued:

AAP #09-26 Orchard Hill Beach Drive Association (Robert O'Shaughnessy) - Request ZBA revoke the Zoning Enforcement Officer's issuance of Zoning Permit #09-207 ZON to John & Elizabeth Vichi. Property located at 2 Orchard Hill Dr., Masons Island, Mystic. Assessor's Map 175 Block 4 Lot 9. Zone RM-15.

ZEO Larkin did not sit with the Board for the hearing on this application or its subsequent deliberations.

IN FAVOR: Bob O'Shaughnessy, president of Orchard Hill Beach Drive Association, spoke in opposition to the granting of the Vichi permit. He apologized for being absent at the original hearing in January because he was recuperating from surgery. He noted that a similar request had been denied a few years earlier and questioned why the permit was being approved this time.

OPPOSITION:

Attorney Kanabis discussed Judge Parker's decision and stated that he did not feel the facts and the issues of the Hescocock vs. Holt case were relevant to the Vichi situation. He reviewed the Holt property history and the argument that they were not eligible for relief. He argued that the Orchard Hill lots were undersized lots existing in 1961 prior to zoning and they have not had any changes since then. He submitted two letters of support from neighbors. Mr. Prue stated that he did not agree because he felt the lots merged back in the 1906's. Mr. Kanabis asserted a definition of lots in 1961 being lots in control by one party. He also argued that this lot was protected back then and now the ZEO has made the lot unbuildable. Mr. Prue made the point that four judges have ruled on 2.9 and cannot be overlooked to go back to 1961. Ms. Conway asked Mr. Kanabis that for lots 24, 25 and 26 if there were not houses on them, according to the court case wouldn't they need a variance to build upon? He again asserted that those lots were protected by the 1961 protection and Lot 23 must also be granted the same consideration. Mr. Rezendes said he had reread the previous 2003 application and thought the attorney's argument was a stretch. Mr. Kanabis read from the brief in the Vichi case.

ZEO Joe Larkin said that while Section 2.9 provides relief to undersized lots, it had nothing to do with this application and should not be the basis for judging his decision to issue the Zoning Permit, Vichi would come in under the RH 10 Zone bulk requirements if Sec. 2.9 was applicable. Instead Vichi's proposal complied with the bulk requirements of RM15 zone it is located in. Mr. Prue asked about whether it met the bulk requirements. Mr. Larkin replied that the proposal submitted to him complied with the bulk requirements of the RM15 zone and that is why he signed off. Mr. Prue accused him of being outside of his jurisdiction, making decisions on his own, and usurping the authority of the ZBA. Larkin disagreed by saying, "Every non-conforming lot carries with it a certain amount of conformity".

David Rossetto spoke in support of the Vichi's.

Donna Ralston spoke in favor.

Carl Fusaro spoke in support.

PUBLIC COMMENTS:

Attorney Jeffrey Londregan brought up the issue of the accusation in an e-mail by Mr. Prue regarding legal jeopardy and how it would be unethical for Londregan to represent the Board since Londregan had given legal advice about the application in response to Kanabis' letter in August, 2009. Mr. Londregan said he would step aside and find alternate counsel if that was the Board's desire. A verbal survey revealed the majority of Board members wanted Mr. Londregan continue as they wanted to hear what he had to say.

Mr. Prue stated that he felt the Board needed its own counsel and asked Mr. Londregan to clarify his position.

Mr. Londregan said it was to interpret the regulations and if there was something of substance by the ZEO to be upheld.

Mr. Guyol asked Mr. Londregan if anything has changed since his letter of August. Mr. Londregan said he had not received new information that would change his position and his statement that the lots were illegally separated from contiguous lots.

Mr. Rezendes asked Mr. Londregan if the ZEO has the right to grant an issuance of a zoning permit without a variance. Mr. Londregan answered, "Yes if there was new information such as he determines that 2.9 was not applicable". Mr. Canavan asked again for clarification about the ZEO's authorization. Mr. Londregan's answer was, "Yes if it is a valid, preexisting, non-conforming lot."

Mr. O'Shaughnessy declined adding any further comment in rebuttal.

Chairman Rathbun closed the Public Hearing at 8:44 PM.

Mr. Prue moved to overturn the ZEO's issuance of Vichi's Zoning Permit. Mr. Rezendes seconded. Mr. Rezendes thought it was the same case as in 2003, that there was no way to offer relief. Mr. Rezendes wanted it noted that Judge Hendel did not have all the information. Mr. Canavan said he was also shocked to see it come up again and he did not think the new information was strong enough to reverse his earlier decision. Mr. Guyol brought up the issue of hardship for the owners. Mr. Rathbun called for the vote on the question: Roll Call: Mr. Prue- Approve, Mr. Guyol-Deny, Mr. Rezendes-Approve, Mr. Canavan-Approve, Mr. Rathbun-Approve, The motion to overturn was approved 4 – 1.

New Business:

Mr. Rezendes moved to add an item to the agenda and to go into Executive Session to discuss pending litigation with the Town Attorney regarding the following:

- M-R Atlantic v. ZBA
- Ritacco v. ZBA
- EOF Realty, LLC v. ZBA
- Farm Ponds Estates North, LLC v. ZBA
- Tebbets v. ZBA

Mr. Prue seconded. The Board voted unanimously to approve this motion and went into Executive Session at 8:55 PM. Everyone left the meeting room except the Board members and Attorney Londregan. Mr. Larkin and the recording secretary also exited the meeting room while the Board was in Executive Session. At 9:55 P.M. the Board came out of Executive Session and finished its regular meeting.

ZBA #10-01 John & Janell Perry – Seeking a variance from ZR 5.1.1 to reduce front yard setback from 40' to 14' along Maple St. and from 40' to 11.1' along Joy Ave. Property located at 19 Joy Ave., Stonington. Assessor's Map 127 Block 7 Lots 2 & 3. Zone RC-120.

The Board voted unanimously to schedule the public hearing for this item on March 9, 2010.

Review and approval of the meeting minutes for January 12, 2010 was tabled.

The meeting adjourned at 10:01 P.M.

Neil Canavan, Secretary